TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~401.~~ 184

THE STEAMBOAT "MOSES TAYLOR," PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

FILED DECEMBER 26, 1868.

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SUPREME COURT OF THE UNITED STATES.

No. 401.

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1 UNITED STATES OF AMERICA, *ss*:

The President of the United States of America to the justices of the Supreme Court of the State of California, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said Supreme Court, before you, between the people of the State of California, plaintiffs, and "The steamer 'Moses Taylor,'" defendant, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf; you are hereby commanded, if judgment be therein given, that under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at said Supreme Court of the United States at Washingon, D. C., on the first Monday of December next, at said Supreme Court of the United States, to be then and there held, that the records and proceedings aforesaid being inspected, the said U. S. Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this twenty-fourth day of January, A. D. 1868, and of the independence of the United States the ninety-second.

[SEAL.]

GEO. E. WHITNEY,
Clerk of the Circuit Court of U. S., District of California.

The above writ of error is hereby allowed.

LORENZO SAWYER,
Chief Justice of the Supreme Court of the State of California.

Endorsed: United States. In the Supreme Court of the State of California. The People of the State of California vs. The steamer "Moses Taylor." Writ of error. J. B. Manchester, att'y for pl'ff in error.

2 UNITED STATES OF AMERICA, *ss*:

The President of the United States of America to the justices of the Supreme Court of the State of California, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said Supreme Court, before you, between the people of the State of California, plaintiffs, and "The steamer Moses Taylor," defendants, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears, and it being fit that the error, if any there hath been,

should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf; you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at said Supreme Court of the United States, at Washington, D. C., on the first Monday of December next, in the said Supreme Court, to be then and there held that the records and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this twenty-fourth day of January, A. D. 1868, and of the independence of the United States the ninety-second.

[SEAL.]

GEO. E. WHITNEY,
Clerk U. S. Circuit Court,
District of California.

The above writ of error is hereby allowed.

LORENZO SAWYER,
Chief Justice of the Supreme Court
of the State of California.

Endorsed: United States. In the Supreme Court of the State of California. The people of the State of California vs. The steamer "Moses Taylor." Writ of error. Copy of writ of error lodged in the clerk's office, in pursuance of the statute in such case, made and provided for the defendants in error. J. B. Manchester, att'y for pl'ff in error. J. B. Manchester, att'y for pl'ff in error.

3 In the Supreme Court of the State of California.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
THE STEAMER "MOSES TAYLOR."

Know all men by these presents, that we, I. W. Raymond of the city of San Francisco, State of California, agent for the defendant above named as principal, and John W. Brumagim and Jacob H. Brumagim as sureties, are held and firmly bound unto she people of the State of California, plaintiff in the above-entitled action, on the sum of five thousand dollars to be paid to the said plaintiffs, their successors, administrators, or assigns. To which payment well and truly to be made we bind ourselves, and each of us jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents.

4 Sealed with our seals, and dated San Francisco, California, January 24th, 1868.

Whereas the defendant, the steamer "Moses Taylor," by its agent,

I. W. Raymond, hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above-entitled action by the Supreme Court of the State of California:

Now, therefore, the condition of this obligation is such that if the above-named defendant shall prosecute his said writ of error to effect and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

I. W. RAYMOND.
J. W. BRUMAGIM.
J. H. BRUMAGIM.

Sealed and delivered in the presence of—
B. F. M. BENSON.

STATE OF CALIFORNIA, *City and county of San Francisco, ss*:

5 John W. Brumagim and Jacob H. Brumagim, sureties on the foregoing bond, being duly sworn, each for himself, deposes and says, that he is a resident of the State of California and a freeholder in said State, and that he is worth the amount specified in said bond over and above his just debts and liabilities, exclusive of property exempt from execution.

J. W. BRUMAGIM.
J. H. BRUMAGIM.

Sworn to before me this 24th day of January, 1868.
J. B. CROCKETT,
Associate Justice of the Supreme Court of California.

Endorsed: Supreme Court of the State of California. The People of the State of California vs. The steamer "Moses Taylor."

Bond of writ of error.

I hereby approve of the sufficiency of the sureties in the foregoing bond.
January 24th, 1868.

J. B. CROCKETT,
Associate Justice Supreme Court of Cal.
LORENZO SAWYER,
Chief Justice of the Supreme Court of the State of California.
B. MANCHESTER,
Att'y for Def't.

6 UNITED STATES OF AMERICA, *ss:*

To the people of the State of California, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be held at Washington, D. C., on the first Monday of December, A. D. 1868, pursuant to a writ of error, filed in the clerk's office of the Supreme Court of the State of California, wherein the steamer "Moses Taylor" is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Lorenzo Sawyer, chief justice of the Supreme Court of the State of California, this twenty-fifth day of January, A. D. 1868, and of the independence of the United States the ninety-second.

[SEAL.] LORENZO SAWYER,
Chief Justice of the Supreme Court of the State of California.

Due service of the above citation acknowledged by service of copy thereof, together with this the original, Jan'y 25th, 1868.

Sacramento, Jan'y 25th, 1868.

JO. HAMILTON, *Attorney General.*

Endorsed: United States Supreme Court. The people of the State of California, d'f't in error, vs. The steamer "Moses Taylor," pl'ff in error. Citation. J. B. Manchester, att'y for pl'ff in error.

7 In the District Court of the fourth judicial district, in and for the city and county of San Francisco and State of California.

Transcript on appeal. Complaint.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
THE STEAMER MOSES TAYLOR.

The people of the State of California, upon the relation of the board of State harbor commissioners, plaintiffs, complain of the steamer Moses Taylor, defendant, as follows: That said defendant is indebted to said plaintiffs for wharfage of the said defendant at the wharf of the plaintiffs, in the city of San Francisco and State of California, known as the Mission street wharf, within one year last passed, in the sum of sixteen hundred and eighty-one dollars, and interest as hereinafter stated, payable in gold coin of the United States; that the following are the items of the account:

8

From Jan. 15 to Jan. 24, and from Feb. 8 to Feb. 15, 1866, four days, at $41 per day	$164 00
Twelve days at $20 50 per day	246 00
Interest from Feb. 15, 1866, to be added.	
From March 19 to April 14, 1866, four days, at $41	164 00

Twenty-two days at $20 50	451 00
Interest from April 14, 1866, to be added.	
From May 18 to June 15, 1866, four days, at $41	164 00
Twenty-four days at $20 50	492 20
Interest from June 15, 1866, to be added.	

That during the times and for the number of days above specified the said defendant occupied a berth at said wharf; that the prices above charged are the usual and customary charges therefor, and were agreed to be paid by the said defendant; that no part of the same has been paid, but the whole amount is now due and owing from the defendant to the plaintiffs, and is by law payable in gold coin.

Wherefore the said plaintiffs demand judgment against the said steamer Moses Taylor for said sum of $1,681, with interest on $410 from Feb. 15, 1866, and on $615 from April 14, 1866, and on $656 from June 15, 1866; such judgment to be payable in gold coin with costs.

EDWARD TOMPKINS,
Plaintiffs' Attorney.

Indorsed: Filed August 14th, 1866. William Loewy, clerk, per Jas. E. Ashcom, D. C.

9 In the District Court of the fourth judicial district of the State of California, in and for the city and county of San Francisco.

Consent for further time to plead.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
STEAMER MOSES TAYLOR.

I hereby consent that the defendant have ten days from this date to plead to the plaintiffs' complaint filed herein.

Dated San Francisco, August, 24th, 1866.

EDWARD TOMPKINS,
Plaintiffs' Attorney.

Endorsed: Filed August 25th, 1866. Wm. Loewy, clerk. per L. J. Lee, D. C.

In the District Court of the fourth judicial district of the State of California, in and for the city and county of San Francisco.

Order granting five days further to plead.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
THE STEAMER MOSES TAYLOR.

On application of J. B. Manchester, esquire, attorney for defendant, it is hereby ordered that said defendant have five days from this date to plead to the plaintiffs' complaint filed herein. Dated San Francisco, Sept. 3d, 1866.

E. D. SAWYER,
District Judge.

Service of a copy of the within order is hereby admitted.
EDWARD TOMPKINS,
Plaintiff's Attorney.

San Francisco, Sept. 3d, 1866.
Filed Sept. 3d, 1866.

WM. LOEWY, *Clerk.*

In the District Court of the fourth judicial district of the State of California, in and for the city and county of San Francisco.

Demurrer.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
THE STEAMER "MOSES TAYLOR."

Now comes the defendant, by J. B. Manchester, his attorney, and demurs to the plaintiff's complaint filed herein, on the ground that upon the face thereof it appears :

First. That this court has no jurisdiction of the defendant, or of the subject-matter of the action, in manner and form as the same is instituted.

1st. Because said court is deprived of such jurisdiction by the Constitution and laws of the United States.

2d. Because the statute law of the State of California, under which this action is brought, is unconstitutional.

3d. Because the board of State harbor commissioners have no authority given them by law to institute actions in rem, in the name of the people of the State of California.

4th. Because the people of the State of California are not the owners of, nor have they any right, title or interest in Mission street wharf, in the city of San Francisco.

Second. That said complaint does not state facts sufficient to constitute a cause of action against the defendant, or to render the defendant liable to said plaintiffs in this form of proceeding.

1st. Because there is no allegation in said compliant that the board of State harbor commissioners are empowered by law to institute actions of this kind.

2d. Because it does not appear from the allegations of said complaint that the owners, master, agents or consignees of said defendant, or either of them, made any contract, either express or implied, to pay the wharfage claimed to be due in said complaint from said defendant to said plaintiffs.

3d. Because it does not appear from the allegations of said complaint that the owners, master, agents or consignees of said defendant, or either of them, agreed to pay the wharfage claimed to be due from the defendant to plaintiff in said complaint.

4th. Because it does not appear from said complaint that
12 any demand was ever made for the payment of said wharfage by said board of State harbor commissioners on the owners, master, agents or consignees of said defendant, or either of them, before said action was brought.

Third. That said complaint is ambiguous, unintelligible and uncertain.

Dated San Francisco, September 8th, 1866.

J. B. MANCHESTER
Attorney for Defendant.

Service of a copy of the within demurrer is hereby admitted.
San Francisco, Sept. 8th, 1866.

EDWARD TOMPKINS,
Plaintiffs' Attorney.

Filed Sept. 8th, 1866.

WM. LOEWY, *Clerk.*
Per JAS. ASHCOM, *D. C.*

In the District Court of the fourth judicial district of the State of California, in and for the city and county of San Francisco. August term.

Demurrer overruled.

PEOPLE OF THE STATE OF CALIFORNIA, plaintiffs,
vs.
STEAMER "MOSES TAYLOR," defendant.

SATURDAY, *Sept.* 29, 1866.

Present, Hon. E. D. Sawyer, judge.

13 The demurrer to the complaint herein having been duly considered by the court, it is ordered that said demurrer be, and the same is hereby overruled, with leave to defendant to answer in ten days.

I hereby certify the foregoing to be a full, true and correct copy of an order entered on the minutes of said Fourth District Court, in the above-entitled cause.

Attest my hand and the seal of said District Court, this 21st day of Dec., A. D. 1866.

[SEAL.]

WM. LOEWY, *Clerk.*
By L. J. LEE, *Deputy Clerk.*

In the District Court of the fourth judicial district of the State of California, in and for the city and county of San Francisco.

Answer.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
THE STEAMER "MOSES TAYLOR."

I. W. Raymond, agent of said steamer, by J. B. Manchester, attorney for defendant, for answer to the complaint filed in said cause, denies that said defendant is indebted to the plaintiffs for wharfage of said defendant, at Mission street wharf, or at any other wharf, in the sum of sixteen hundred and eighty-one dollars, as alleged in said complaint, or in any other sum, or for any interest on said sum, or on any other sum whatever.

14 He further denies, that at the times, or for the number of days, specified in said complaint, or at any other times, or for any number of days, the defendant occupied a berth at said wharf.

He further denies that the prices charged in said complaint are the usual and customary charges at said wharf, or that the defendant agreed to pay said charges, or any other charges whatever.

And, for further answer, he denies each and every material allegation of said complaint.

Wherefore defendant demands judgment for his costs.

Dated San Francisco, October 8th, 1866.

J. B. MANCHESTER,
Attorney for Defendant.

Service of a copy of the within answer is hereby admitted.
San Francisco, October 8th, 1866.

EDWARD TOMPKINS,
For Plainttffs.

Filed October 8th, 1866.

WM. LOEWY, *Clerk.*
Per JAS. E. ASHCOM, *Dep. Clerk.*

15 In the District Court of the fourth judicial district of the State of California, in and for the city and county of San Francisco, November term.

Order of court.

THE PEOPLE OF THE STATE OF CALIFORNIA, plaintiffs,
vs.
STEAMER "MOSES TAYLOR," defendant.

TUESDAY, *November 27th*, 1866.

Present, Hon. E. D. Sawyer, judge.

This cause coming on regularly for trial this day, Mr. Tompkins appeared as attorney for plaintiffs. No one appearing on behalf of defendant, and a trial by jury having been heretofore waived, the cause was tried by the court sitting without a jury.

Whereupon Edward Tompkins, plaintiffs' attorney, having been duly sworn and examined as to computation of interest and amount remaining due upon the demand alleged in the complaint, and the cause being submitted for decision;

It is ordered by the court, that a finding be drawn, and judgment be entered herein, in favor of the plaintiffs and against the defendant, for the sum of $1,781 66, United States gold coin.

Counsel to draw finding.

I hereby certify the foregoing to be a full, true and correct
16 copy of an order entered on the minutes of said Fourth District Court, in the above-entitled cause.

Attest my hand and the seal of said District Court, this 11th day of March, A. D. 1867.

[SEAL.] WM. LOEWY, *Clerk.*
By MOT. BODEN, *Deputy Clerk.*

In the District Court of the fourth judicial district, in and for the city and county of San Francisco.

Findings of the court.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
THE STEAMER "MOSES TAYLOR."

This cause coming on to be tried by the court without a jury, a trial by jury having been duly waived, and the pleadings, proofs and allegations having been heard and considered, the court now finds the following facts:

1. That the defendant was at the commencement of this action, and yet is, justly indebted to the plaintiffs for the wharfage of the defendant at the wharf of the plaintiffs, at the times and in the sums in the said complaint mentioned and set forth, and that there was

due to the plaintiffs, at the commencement of this action, $1,681 00 and interest, as demanded in the complaint, payable in gold coin of the United States.

2. That the amount of interest due the plaintiffs to this day is $100 66, and that there is justly due to the plaintiffs from the
17 defendant, by reason of the premises, for principal and interest, the sum of $1,781 66 in gold coin.

And as a conclusion of law, the court finds that the plaintiffs are entitled to judgment against the defendant for $1,781 66 and costs, such judgment to be payable in gold coin. And it is so ordered.

San Francisco, November 27th, 1866.

E. D. SAWYER.
District Judge.

Indorsed: Filed November 27th, 1866. Wm. Loewy, clerk; per Jas. E. Ashcom, dep. clerk.

In the District Court of the fourth judicial district of the State of California in and for the city and county of San Francisco.

Judgment.

PEOPLE OF THE STATE OF CALIFORNIA
vs.
STEAMER MOSES TAYLOR. } No. 13022.

This cause came on regularly for trial; Mr. Edward Tompkins appearing as counsel for the plaintiffs, and no one appearing for the defendant. A trial by jury having been expressly waived by the counsel for the respective parties, the cause was tried before the court sitting without a jury. Whereupon plaintiff's attorney, being duly sworn and examined, and the evidence being closed, the cause was submitted to the court for consideration and decision, and
18 after due deliberation thereon, the court delivers its finding and decision in writing, which is filed, and orders that judgment be entered in accordance therewith.

Wherefore, by reason of the law and the finding aforesaid, it is ordered, adjudged and decreed that the people of the State of California, plaintiffs, do have and recover of and from the steamer Moses Taylor, defendant, in gold coin of the United States, the sum of seventeen hundred and eighty-one dollars and sixty-six cents, with interest thereon at the rate of ten per cent. per annum from the date hereof till paid, together with said plaintiffs' costs and disbursements incurred in this action, amounting to the sum of one hundred and seven dollars and fifty-eight cents ($107 58.)

Judgment recorded December 21st, A. D. 1866.

In the District Court of the fourth judicial district of the State of California in and for the city and county of San Francisco.

Notice of appeal.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
THE STEAMER MOSES TAYLOR.

To William Loewy, esq., clerk of said city and county:

SIR: Please take notice that I. W. Raymond, agent for the defendant, appeals on behalf of said defendant from the judgment
19 entered in said cause in favor of the plaintiffs to the Supreme Court of said State of California.

San Francisco, December 31st, 1866.

J. B. MANCHESTER,
Att'y for defendant.

Indorsed: Filed Dec. 31st, 1866. Wm. Loewy, clerk; per L. J. Lee, D. C.

Service of a copy of the within notice of appeal is hereby admitted this thirty-first day of December, 1866, after filing.

EDW'D TOMPKINS,
Attorney for Plaintiff.

In the District Court of the fourth judicial district of the State of California in and for the city and county of San Francisco.

THE PEOPLE OF THE STATE OF CALIFORNIA
vs.
THE STEAMER MOSES TAYLOR.

I, William Loewy, county clerk of the city and county of San Francisco and ex-officio clerk of the District Court of the fourth judicial district of the State of California in and for the city and county of San Francisco, do hereby certify the foregoing to be full, true and correct copies of original papers on file in my office, and of original orders entered on the minutes of said court.

That the same constitute the transcript on the appeal of said plaintiffs to the Supreme Court of this State from the judgment entered in said cause in favor of the plaintiffs.

20 In witness whereof I have hereunto set my hand and affixed the seal of said District Court this twentieth day of March, A. D. 1867.

[SEAL.]

WM. LOEWY, *Clerk*,
P'r JAS. E. ASHCOM,
Dep. Clerk.

Assignment of errors.

The appellant assigns the following grounds of error on which he will rely upon the appeal herein:

1. That the court erred in overruling the demurrer filed on the part of the defendant in said cause.
2. That the court should have sustained said demurrer.
3. The court erred in finding any sum due from the defendant to the plaintiffs in gold coin.
4. The court erred in ordering a judgment in said cause payable in gold coin.
5. The court erred in ordering a judgment for the plaintiffs.
6. The court should have ordered a judgment for the defendant.

J. B. MANCHESTER,
Att'y for Appellant.

Service of a copy of the foregoing transcript and assignment of errors is hereby admitted.

San Francisco, March 20th, 1867.

EDWARD TOMPKINS,
Att'y for Respondents.

21 *Opinion of the court.*

THE PEOPLE
vs.
STEAMER MOSES TAYLOR. } No. 1295.

Judgment affirmed on the authority of The People vs. Steamer America, decided at the present term.

We concur:

RHODES, *J.*,
SAWYER, *C. J.*,
SANDERSON, *J.*,
SPRAGUE, *J.*,
CROCKETT, *J.*

22 In the Supreme Court of the State of California, January term, A. D. 1868.

Judgment.

THE PEOPLE OF THE STATE OF California
vs.
THE STEAMER MOSES TAYLOR.

On appeal from the District Court of the fourth judicial district in and for the city and county of San Francisco.

And now at this day this cause being called, and having been heretofore submited and taken under advisement by the court, and all and

singular the law and premises being by the court here seen, heard, understood and fully considered, the opinion of the court herein is delivered by Rhodes, J., full bench concurring to the effect that the judgment of the court below be affirmed. Whereupon it is now considered, ordered, adjudged and decreed by the court here; that the judgment of the District Court of the fourth judicial district, in and for the city and county of San Francisco, in the above entitled cause be, and the same is hereby affirmed with costs.

23 In the Supreme Court of the State of California.

THE PEOPLE OF THE STATE OF California
vs.
THE STEAMER MOSES TAYLOR.

I, George Seckel, clerk of the Supreme Court, do hereby certify that the preceding and annexed contains a full, true and correct copy of the original record, opinion of the Supreme Court aforesaid, and the judgment thereon; also the original writ of error to the Supreme Court of the United States, copy thereof left for the defendant in error, and the original citation.

In witness whereof I have hereunto set my hand and affixed the seal of the Supreme Court aforesaid this eighth day of June, A. D. 1868.

[SEAL.]

GEO. SECKEL, *Clerk.*
By WM. G. WOOD, *D'y Clk.*

REC. 401—3